



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Jennifer Satterlee
Treasurer
Prosperity for Michigan
201 Townsend Ste. 923
Lansing, MI 48933

DEC 19 2013

RE: MUR 6613
Prosperity for Michigan

Dear Ms. Satterlee:

On July 31, 2012, the Federal Election Commission (the "Commission") notified Prosperity for Michigan and you in your official capacity as treasurer (the "Committee"), of a complaint alleging that the Committee violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided you with a copy of the complaint.

After reviewing the allegations contained in the complaint, your response, and other available information, on November 19 and December 6, 2013, the Commission found reason to believe that the Committee violated 2 U.S.C. § 434(b)(2) by failing to report contributions. The Commission also found no reason to believe that the Committee violated 2 U.S.C. § 434(g)(1) and 11 C.F.R. § 104.4(c) and dismissed the allegations that the Committee violated 2 U.S.C. §§ 434(b)(3) and 441a(a). Finally, the Commission found no reason to believe that you knowingly or willfully violated 2 U.S.C. § 434(b). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your clients as a way to resolve this matter at an early stage.

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In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

We look forward to your response.

On behalf of the Commission,

A handwritten signature in black ink, appearing to read "Ellen L. Weintraub", with a stylized flourish at the end.

Ellen L. Weintraub
Chair

Enclosures
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Prosperity for Michigan and **MUR 6613**
Jennifer Satterlee in her official capacity as treasurer
Jennifer Satterlee in her personal capacity

I. INTRODUCTION

This matter involves allegations that Prosperity for Michigan, an independent expenditure-only political committee, knowingly and willfully violated the Federal Election Campaign Act of 1971, as amended (the "Act") by failing to disclose any receipts or disbursements in its original July 2012 Quarterly Report, filed July 13, 2012. Compl. at 1-2 (July 24, 2012). The Complaint contends that Prosperity for Michigan intentionally withheld disclosure of its contributors to shield their identities when distributing a television attack ad against Hoekstra that was allegedly aired on July 21, 2012 ("Anti-Hoekstra Ad").¹ *Id.* at 1. The Complaint alleges that Prosperity for Michigan then filed an amended report, disclosing \$188,500 in contributions on July 23, 2012. *Id.* at 2.

The Complaint also alleges that Prosperity for Michigan failed to timely disclose its activities when it filed a 48-hour independent expenditure report instead of a 24-hour report, as required by Commission regulations. *Id.* at 4. The Complaint further alleges that Prosperity for Michigan failed to include employer and occupation information for seven of the nine individual contributors in its amended 2012 July Quarterly Report. *Id.* at 2. Finally, the Complaint posits that similarities between the Prosperity for Michigan ad and an ad run by the Clark Durant campaign committee, The American Way – Durant 2012 ("Durant Committee"), suggest that

¹ Based on the allegation that this reporting violation was knowing and willful, the Complaint argues that Jennifer Satterlee should be held personally liable under the Commission's *Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings*, 70 Fed. Reg. 3 (Jan. 3, 2005) ("Enforcement Treasurer Policy").

Prosperity for Michigan may have coordinated its ad with, and thus made an unreported in-kind contribution to, the Durant Committee. *Id.* n.4.

Prosperity for Michigan's treasurer, Jennifer Satterlee, submitted an affidavit acknowledging that Prosperity for Michigan failed to comply with some of the reporting provisions of the Act and Commission regulations; however, she denies that she acted knowingly and willfully and contends that Prosperity for Michigan's mistakes were the result of inexperience with filing Commission reports. Jennifer Satterlee Aff. ¶¶ 4.d, 6 (Aug. 8, 2012). Prosperity for Michigan also denies that it failed to timely file the independent expenditure report and denies that it coordinated with the Durant Committee. Satterlee Aff. ¶¶ 5, 7.

As discussed below, the Commission finds reason to believe that Prosperity for Michigan violated 2 U.S.C. § 434(b)(2) by failing to report contributions, but no reason to believe that Jennifer Satterlee in her personal capacity knowingly and willfully violated 2 U.S.C. § 434(b). The Commission also dismisses the allegation that Prosperity for Michigan violated 2 U.S.C. § 434(b)(3) by failing to provide identifying information of contributors. The Commission further finds no reason to believe that Prosperity for Michigan violated 2 U.S.C. § 434(g)(1) by allegedly failing to timely file an independent expenditure report. Finally, the Commission dismisses the allegation that Prosperity for Michigan violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to the Durant Committee via coordinated communications.

II. FACTUAL AND LEGAL ANALYSIS

Prosperity for Michigan is an independent expenditure-only political committee. *See* Prosperity for Michigan Statement of Organization (Apr. 6, 2012). Jennifer Satterlee is its treasurer. *Id.* The American Way – Durant 2012 is the principal campaign committee of Clark Durant, who was a Republican candidate for U.S. Senate in Michigan's primary election in 2012.

1 See The American Way – Durant 2012 Statement of Organization (Aug. 31, 2011). Durant lost
2 the primary election to Pete Hoekstra on August 7, 2012. Rqst. for Dismissal.

3 **A. Alleged Failure to Report Receipts**

4 Although Prosperity for Michigan had received contributions totaling \$188,500 between
5 April and June 2012, its July Quarterly Report disclosed no receipts for the relevant time period.
6 See Prosperity for Michigan 2012 July Quarterly Report (July 13, 2012). In its Response,
7 Satterlee claims that the failure to report these receipts “was an error on my part because I
8 thought since the Committee is an independent expenditure only committee, that I had to report
9 independent expenditures *only*.” Satterlee Aff. ¶ 4.d (emphasis in original). An intern at the
10 McLellan Law Offices, see Satterlee Aff. ¶ 1, Satterlee had no prior experience as a political
11 committee treasurer and limited knowledge of campaign finance laws. After speaking to an
12 analyst from the Reports Analysis Division (“RAD”),² Satterlee realized that Prosperity for
13 Michigan should have reported contributions as well as expenditures and filed an amended report
14 disclosing the \$188,500 in contributions on July 23, 2012. Satterlee Aff. ¶ 4.d; Prosperity for
15 Michigan Amended July 2012 Quarterly Report (July 23, 2012).

16 The Act provides that a political committee must disclose the total amount of all receipts,
17 including contributions, received for the reporting period and calendar year. See 2 U.S.C.
18 § 434(b)(2). Independent expenditure-only political committees may accept unlimited
19 contributions and contributions from corporations and labor organizations, but they are subject to
20 the reporting requirements of 2 U.S.C. § 434(b). See *SpeechNow.org v. FEC*, 599 F.3d 686, 697-
21 98 (D.C. Cir. 2010) (holding that such committees must comply with the reporting requirements

² Telephone Call from Jennifer Satterlee, Prosperity for Michigan, to Sarah Juris, RAD, July 23, 2012 (12:26 PM).

of the Act, including the obligation to report contributions that the committees accept); Advisory Op. 2010-11 (Commonsense Ten).

As an independent expenditure-only political committee registered with the Commission, Prosperity for Michigan was required to comply with the reporting requirements of 2 U.S.C. § 434(b). In its original July 2012 Quarterly Report, however, Prosperity for Michigan failed to disclose any of its receipts and to identify contributors who made contributions in excess of \$200. Prosperity for Michigan did not make the required disclosures under section 434(b)(2) until it amended the July Quarterly Report on July 23, 2012. Accordingly, the Commission finds reason to believe that Prosperity for Michigan violated 2 U.S.C. § 434(b)(2).

Under the Commission's Enforcement Treasurer Policy, a treasurer may be personally liable for violations of the Act where the treasurer: (1) "knowingly and willfully violated the Act or Commission regulations;" (2) "recklessly failed to fulfill the duties imposed by a provision of the Act or regulations that applies specifically to treasurers;" or (3) "intentionally deprived himself or herself of the operative facts giving rise to a violation." 70 Fed. Reg. at 6. A knowing and willful finding requires that the respondent knew that his or her action was unlawful. *See AFL-CIO v. FEC*, 628 F.2d 97, 101-02 (D.C. Cir. 1980).

Satterlee — an intern, not a lawyer — has submitted sworn statements that the violations resulted from her lack of knowledge of campaign finance laws. Satterlee Aff. ¶¶ 4.d, 6. We have no credible information suggesting that Satterlee intentionally sought to violate the Act or recklessly sought to avoid fulfilling a known legal obligation. Accordingly, the Commission finds no reason to believe that Satterlee knowingly and willfully violated 2 U.S.C. § 434(b) in her personal capacity.

B. Alleged Failure to Provide Identifying Information for Contributors

In the July 2012 Quarterly Report, Prosperity for Michigan failed to provide employer and occupation information for seven of the nine individuals who made contributions in excess of \$200. A political committee must identify each person who makes a contribution having an aggregate amount in excess of \$200 within the calendar year, together with the date and amount of any such contribution. *See* 2 U.S.C. § 434(b)(3)(A). When identifying an individual who is a contributor, a political committee must include the individual's name, mailing address, occupation, and employer. *See id.* § 431(13)(A); 11 C.F.R. § 100.12. If a treasurer of a political committee is able to demonstrate that he or she has exercised best efforts to "obtain, maintain, and submit" such information, however, the committee shall be considered in compliance with the Act. 2 U.S.C. § 432(i); 11 C.F.R. § 104.7(a).³

Although its Response does not provide any specific information as to how Prosperity for Michigan met the requirements for exercising best efforts under 11 C.F.R. § 104.7, it appears that the Committee sought to obtain required contributor information as evidenced by Satterlee's conversations with RAD on July 26, 2012, during which she described her attempts to obtain employer and occupation information from contributors.⁴ Moreover, Prosperity for Michigan provided the missing information in an amended July 2012 Quarterly Report filed on October 4, 2012.

³ To demonstrate "best efforts," written solicitations for contributions must include a clear request for the required contributor information. 11 C.F.R. § 104.7(b). In addition, the solicitation must include an accurate statement of federal law regarding the collection and reporting of individual contributor identification. *Id.* For each contribution received aggregating in excess of \$200 per calendar year that lacks such information, the committee treasurer must make at least one effort to obtain the information no later than 30 days after the receipt of the contribution. *Id.* § 104.7(b)(2).

⁴ Telephone Call from Jennifer Satterlee, Prosperity for Michigan, to Sarah Juris, RAD, July 26, 2012, 12:26 PM.

As in MUR 6438 (Art Robinson for Congress), although there may be some information about the Committee's best efforts that could be further developed, an investigation would not be a prudent use of the Commission's resources. Under these circumstances, the Commission has decided not to pursue this matter further. *See* MUR 6031 (Hagan) (dismissing allegation that committee failed to provide required contributor information where committee failed to satisfy all elements of best efforts but demonstrated that it had made improvements to comply with disclosure requirements). Accordingly, the Commission dismisses the allegation that Prosperity for Michigan violated 2 U.S.C. § 434(b)(3). *See Heckler v. Chaney*, 470 U.S. 721 (1985).

C. Alleged Failure to Timely File Independent Expenditure Reports

According to the Complaint, on July 21, 2012, Prosperity for Michigan began airing the Anti-Hoekstra Ad attacking Hoekstra and supporting the election of Durant. Compl. at 2; *see also* <http://prosperityformichigan.com/> (last visited Nov. 11, 2012). On July 23, 2012, Prosperity for Michigan filed a "48-Hour Report of Independent Expenditures," disclosing \$288,628.00 in independent expenditures made on July 21, 2012, in support of Durant. *See* Prosperity for Michigan 48-Hour Report of Independent Expenditures (July 23, 2012). According to this Report, Prosperity for Michigan paid Media Ad Ventures, in Springfield, Virginia, a total of \$275,000 for the purpose of airing a "TV Ad." *Id.* Because the July 23 Report indicates that Prosperity for Michigan made its independent expenditure on July 21, 2012, the Complaint alleges that Prosperity for Michigan started airing the Anti-Hoekstra Ad on July 21 and therefore failed to timely file the report. Compl. at 2.

The Response claims that Prosperity for Michigan began airing the Anti-Hoekstra Ad on July 23, 2012. Satterlee Aff. ¶ 5. Satterlee contends that Prosperity for Michigan filed its Reports of Independent Expenditures on July 23 and 24, 2012, within 24 hours of when the ad

1 aired and that they were therefore timely. Satterlee Aff. ¶ 5. Satterlee claims that her mistake
2 was that she checked the “48-Hour report” box on the relevant Commission form. *Id.* ¶ 4.f.

3 Under 2 U.S.C. § 434(g)(1)(A), a person that makes independent expenditures
4 aggregating \$1,000 or more after the 20th day, but more than 24 hours before the date of an
5 election, must file a report describing such expenditures within 24 hours. Michigan held its
6 primary election on August 7, 2012.⁵ Compl. at 2. Under 11 C.F.R. § 104.4(c), a 24-Hour
7 Report of Independent Expenditure must be filed “the day following the date on which a
8 communication is publicly distributed or otherwise publicly disseminated.” *See also* Federal
9 Election Commission, *Campaign Guide for Nonconnected Committees* at 72 (2008) (stating that,
10 when completing a Schedule E, the date that an independent expenditure is “made” is the date
11 that the expenditure has been “publicly disseminated”). It appears that Prosperity for Michigan
12 ran the Anti-Hoekstra Ad on July 23, 2012. Thus, Prosperity for Michigan made the requisite
13 disclosures on a timely basis and well before the primary election, and the Commission finds no
14 reason to believe that Prosperity for Michigan violated 2 U.S.C. § 434(g)(1)(A).

15 **D. Alleged Coordination between Prosperity for Michigan and the Durant**
16 **Committee**

17
18 The Complaint notes in a footnote that Prosperity for Michigan’s Anti-Hoekstra Ad is
19 “strikingly similar” to an ad, entitled “18 Years,” paid for and authorized by the Durant
20 Committee (“18 Years Ad”) that began running at approximately the same time. Compl. at 2
21 n.4.⁶ The Complaint concludes the footnote saying, “[s]uch marked similarities raise serious

⁵ Regardless of whether Prosperity for Michigan began airing the Anti-Hoekstra Ad on July 21 or July 23, 2012, Prosperity for Michigan was required to file a 24 Hour Report of Independent Expenditure because the ad would have aired less than 20 days before the primary election.

⁶ The Complaint states that “PFM’s ad is strikingly similar to an ad paid for and sponsored by Clark Durant’s official campaign committee and which began running on the same day. Both ads address the exact same topics, including allegations against Hoekstra about earmarks, raising pay, voting for bailouts and raising debt, and raising the debt ceiling.” Compl. at 2 n.4. The Complaint cites the ad titled, “18 Years” that the Durant Committee apparently published on YouTube on July 22, 2012 (notwithstanding the allegation in the Complaint that the ad ran

1 questions about coordination between Prosperity for Michigan and Durant's official campaign."

2 *Id.*

3 Satterlee denies any personal knowledge of coordination between Prosperity for
4 Michigan and the Durant Committee: "[t]o the best of my knowledge there has never been any
5 kind of coordination between Prosperity for Michigan and 'The American Way,' Clark Durant's
6 official campaign." Satterlee Aff. ¶ 7.

7 The Act provides that no person may make a contribution, including an in-kind
8 contribution, to a candidate and his authorized political committee with respect to any election
9 for federal office which, in the aggregate, exceeds \$2,500. 2 U.S.C. § 441a(a)(1)(A).⁷ In
10 addition, no candidate or political committee may knowingly accept an excessive contribution.

on television beginning July 21, 2012). See http://www.youtube.com/watch?v=vd5g3_mkH-I&feature=em-share_video_user (last visited Nov. 14, 2013). The Durant Committee's ad includes the following audio text:

I'm Clark Durant and I approve this message.
Eighteen years in Washington changed Congressman Pete Hoekstra.
Hoekstra voted for thousands of wasteful earmarks spending projects costing us billions.
He voted five times to raise his own pay.
And he voted for the \$700 Billion Wall Street Bailout.
No wonder Hoekstra voted to increase the federal debt ceiling to over \$11 trillion dollars.
Congressman Pete Hoekstra, he can't change Washington because he is Washington.

Id. The Complaint goes on to compare the Anti-Hoekstra television ad, aired by Prosperity for Michigan on July 23, 2012. See http://www.youtube.com/watch?v=TLEVpEtU5vg&feature=em-share_video_user (last visited Nov. 14, 2013). See also Satterlee Aff. ¶ 7 (stating that the ad ran on July 23, 2012). The Prosperity for Michigan ad includes the following audio text:

Washington needs reform.
Yet for 18 years Pete Hoekstra helped cause the problems.
Voting for millions in earmarks.
Raising his own pay.
Adding trillions to the debt.
Raising the debt ceiling repeatedly.
Clark Durant is a true reformer.
Who'll fight to end Wild Spending and Earmarks.
Stop Obamacare, Reject debt ceiling hikes.
Pete Hoekstra can't fix Washington. He's part of the problem.
Clark Durant will.
Prosperity for Michigan PAC is responsible for the contents of this ad.

⁷ See also *Price Index Adjustments for Contribution and Expenditure Limits and Lobbyist Bundling Disclosure Threshold*, 76 Fed. Reg. 8368, 8369 (Feb. 14, 2011) (adjusting section 441a(a)(1)(A)'s limit for inflation to \$2,500 for 2011 and 2012).

1 *See id.* § 441a(f). The Act defines contributions as, *inter alia*, expenditures by any person “in
2 cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his
3 authorized political committees, or their agents” *Id.* § 441a(a)(7)(B)(i). A communication
4 is coordinated with a candidate, an authorized committee, a political party committee, or agent
5 thereof if it meets a three-part test: (1) payment for the communication by a third party; (2)
6 satisfaction of one of four “content” standards of 11 C.F.R. § 109.21(c); and (3) satisfaction of
7 one of six “conduct” standards of 11 C.F.R. § 109.21(d). *See* 11 C.F.R. § 109.21.

8 The Prosperity for Michigan ad satisfies the payment and content prongs of the
9 coordination regulation.⁸ The complaint is unclear, however, as to whether or how the conduct
10 prong may have been satisfied.⁹ While the advertisements sound similar themes, the Durant
11 Committee notes in its Response that the issues presented in the ads are not new critiques of Mr.
12 Hoekstra; indeed, “numerous televised ads” focusing on these same issues were run across the
13 state of Michigan during his race for Governor in 2010.¹⁰ Moreover, the complaint contains no
14 allegations or information as to any communications between the Durant Committee and
15 Prosperity for Michigan, nor does it identify any person who might have been in a position to
16 share information between the two.

⁸ First, Prosperity for Michigan does not dispute that it made expenditures to air the Anti-Hoekstra Ad. Second, the Ad satisfies the content prong because it identifies both Clark Durant and Pete Hoekstra, who were both candidates for U.S. Senate, and was broadcast on television in Michigan on or about July 23, 2012, 15 days before Michigan's primary election held on August 7, 2012. *See* 11 C.F.R. § 109.29(c)(4). Thus, the Ad qualifies as a public communication referring to a clearly identified candidate distributed within 90 days of an election. In addition, Prosperity for Michigan filed an Independent Expenditure Report in connection with the Anti-Hoekstra Ad, which by definition is only required for an expenditure that expressly advocates the election or defeat of a clearly identified candidate. *See* 2 U.S.C. § 431(17).

⁹ Under Commission regulations, the conduct prong is satisfied if a communication meets one of six conduct standards: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee or independent contractor; (6) dissemination, distribution or republication of campaign material. *See* 11 C.F.R. § 109.21(d).

¹⁰ *See* Durant Committee Resp. at 2.

1 The information presented in the complaint does not present sufficient basis to warrant
2 the use of further Commission resources to investigate the allegation that the anti-Hoekstra Ad
3 was a coordinated communication under section 109.21. Accordingly, the Commission exercises
4 its prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. at 721, and dismisses the
5 allegation that Prosperity for Michigan made an excessive in-kind contribution in violation of 2
6 U.S.C. § 441a(a).

7 **III. CONCLUSION**

8 In conclusion, the Commission takes the following actions: (1) finds reason to believe
9 that Prosperity for Michigan and Jennifer Satterlee in her official capacity as treasurer violated
10 2 U.S.C. § 434(b)(2) by failing to report contributions; (2) finds no reason to believe that
11 Jennifer Satterlee in her personal capacity knowingly and willfully violated 2 U.S.C. § 434(b);
12 (3) dismisses the allegation that Prosperity for Michigan and Jennifer Satterlee in her official
13 capacity as treasurer violated 2 U.S.C. § 434(b)(3) by failing to provide identifying information
14 of contributors; (4) finds no reason to believe that Prosperity for Michigan and Jennifer Satterlee
15 in her official capacity as treasurer violated 2 U.S.C. § 434(g)(1) and 11 C.F.R. § 104.4(c) by
16 allegedly failing to timely file an independent expenditure report; and (5) dismisses the
17 allegation that Prosperity for Michigan and Jennifer Satterlee in her official capacity as treasurer
18 violated 2 U.S.C. § 441a(a) by making excessive contributions to the Durant Committee via
19 coordinated communications.

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